

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
VERNELL H. PETERSEN)

For Appellant: Vernell H. Petersen, in pro. per.

For Respondent: Bruce W. Walker
Chief Counsel

John R. Akin
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Vernell H. Petersen for refund of personal income tax in the amount of \$770.00 for the year 1975, and in denying to the extent of **\$1,173.38** the claim of Vernell H. Petersen for refund of personal income tax for the year 1976.

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The sole question for decision is whether compensation received by appellant during the years in question constituted income from **California** sources which was subject to the California personal income tax.

Appellant and his wife have been residents of the State of Oregon since 1963. Appellant is a merchant seaman employed by United River Lines of San Francisco, California. He is a member of the Inland **Boatsman** Union local in San Francisco and works as a tankerman on fuel barges which operate on San Francisco Bay and its tributaries. In that capacity, he typically works sixteen hours per day for **five days**, then has nine days off. During his duty time, he lives on board the barge and stores his Oregon-registered automobile at the home dock of the barge in Richmond, California. He spends his days off at his permanent residence in Grants Pass, Oregon.

Appellant filed timely nonresident personal income tax returns with respondent for 1975 and 1976. In those returns, he declared all compensation he had received from United River Lines as **California** income and paid tax accordingly. As a resident of Oregon, he apparently paid Oregon income tax on that same income. Thereafter, appellant filed amended returns with respondent for both years, showing no California income and requesting a refund of the tax which had been withheld by United River Lines from his wages. Respondent denied those refund claims 1/ on the ground that appellant's wages **constituted taxable income derived from California** sources. That action gave rise to this appeal.

For purposes of the California Personal Income Tax Law, the gross income of a nonresident taxpayer includes only his gross income from sources within this state. (Rev. & Tax. Code, **§ 17951.**) It is settled law that the source **of income** from personal services is the place where the services are performed, regardless of the place of residence of the taxpayer. (Appeal of Robert C. and Marian Thomas, Cal. St. Bd. of Equal., April 20, 1955; see also Appeal of Janice Rule, Cal. St. Bd. of Equal., October 6, 1976.) Respondent's regulations provide, in relevant part:

1/ Appellant's 1976 claim was for refund of an amount greater than **the** amount of tax withheld from his wages. It was partially granted, **but** denied to the extent of **\$1,173.38**, the **amount** of the income tax withheld by his employer.

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If nonresident employees ... are employed continuously in this State for a definite portion of any taxable year, the gross income of the employees from sources within this State includes the total compensation for the period employed in this State. (Cal. Admin. Code, tit. 18, reg. 17951-17954(e), subd. (4).)

During the years in question, all of the personal services rendered by appellant as a tankerman for United River Lines were performed on San Francisco Bay and other waters located within the boundaries of the State of California. Accordingly, the total compensation which appellant received for such services constituted **gross** income from sources within this state which was subject to the California personal income tax.

Appellant does not deny that his employment by United River Lines involved the performance of services solely within this state. He argues, however, that his entire California income was earned as a seaman, and "seaman [sic] are protected by the Fed. code **Sec.** 6103 -- Seaman [sic] pay state tax in the state they reside."

We believe appellant must be referring to a proviso contained in section 601 of title 46 of the United States Code. Prior to 1959, that section prohibited the attachment or **arrest-**ment of the wages of a merchant seaman for any reason other than a court order regarding family support. In 1959, Congress added the following language to section 601:

And provided further, That no part of the wages due or accruing to a master, officer, or any other seaman who is a member of the crew on a vessel engaged in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade shall be withheld pursuant to the provisions of the tax laws of any State, Territory, possession, or Commonwealth, or a subdivision of any of them. [Pub. L. No. 86-263, 73 Stat. 551.1

Appellant's assertion that this provision in some way protects him from imposition of the California income tax on his wages is incorrect for several reasons. First, he does not come within the terms of the proviso because he is a member of the crew on a vessel engaged in purely intrastate trade. Secondly, even if his vessel were **engaged in foreign** or interstate trade, the proviso would have no effect on his liability

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for income taxes otherwise due to the State of California. The primary purpose of the 1959 amendment to section 601 (46 U.S.C. 601) was to prevent the problems associated with multiple withholdings of **tax** from the wages of seamen who might be in ports of different **states** when they received their pay. The amendment's prohibition against withholding was in no way intended to impair the power of a state to impose income taxes on the wages of seamen earned within its boundaries, or to relieve seamen of their liability for such taxes properly due. (See 1959 U.S. Code Cong. & Ad. News 2532; see also State of Alaska v. Petronia et al., 69 Wash. 2d 460 [418 P.2d 755] (1966), app. diss., 389 U.S. 7 [19 L. Ed. 2d 6] (1967) and Streckfus Steamers, Inc. v. City of St. Louis, 472 S. W. 2d 660 (St. Louis Ct. App., Mo. (1971), cert. den., 409 U.S. 841 [34 L. Ed. 2d 80] (1972).)

For the reasons stated above, we conclude that **respondent** properly denied appellant's claims for refund of California personal income tax withheld by United River Lines from his wages. Since those wages constituted California source income the tax was **properly** imposed, and any relief from double taxation would have to be sought from the State of Oregon. 2/

O R D E R

Pursuant to the views expressed in the opinion of **the** board on file in this proceeding, and good cause appearing therefor,

2/ We note that, with certain limitations, the State of Oregon does allow its residents a credit for income taxes paid to another state on income derived from sources in that other state and that is also subject to tax in Oregon.. (See Oregon Revised Statutes 316.082.)

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Vernell H. Petersen for refund of personal income tax in the **amount** of \$770.00 for the year 1975, and in denying to the extent of **\$1,173.38** the claim of Vernell H. Petersen for refund of personal income tax for the year 1976, be and the same is hereby sustained'.

June Done at Sacramento, California, this 28th day of
, 1979, by the State Board of Equalization.

William W. Bunker Chairman
John J. Gentry Member
Robert H. Kerner Member
_____, Member
_____, Member